

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI D. CORBIN and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 02-630; Oral Argument Held July 1, 2003;
Issued November 21, 2003*

Appearances: *David J. Batton, Esq.*, for appellant; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined appellant's wage-earning capacity based on her actual earnings.

On January 17, 1995 appellant, then a 38-year-old letter carrier filed a claim alleging that on December 30, 1994 she injured her left wrist when she tripped and fell while delivering mail. The Office accepted that appellant sustained a left wrist sprain and authorized left ulnar shortening to repair the injury.¹ Appellant stopped work on December 30, 1994, returned to limited duty on January 5, 1995 and received wage-loss compensation for intermittent periods, thereafter, based on the restrictions provided by her doctors. Her salary on the date of injury was \$34,475.00 per year. On November 21, 1995 appellant submitted a Form CA-8, claim for continuing compensation on account of disability, which indicated that she worked from December 29, 1994 forward with the exception of intermittent dates with an annual salary of \$34,775.63. On January 17, 1996 the Office referred appellant to a rehabilitation nurse who, in reports dated February 2 to April 5, 1996, advised that appellant had been working full-time limited duty since her accident of December 30, 1994.

In support of her claim, appellant submitted a duty status report from Dr. Carl Camp, a family practitioner, who diagnosed a sprained wrist and advised that appellant could return to work full time on December 30, 1994 with a lifting restriction of 20 pounds and no fine manipulation. His disability certificate dated December 30, 1994 noted that appellant could return to work on January 3, 1995 with a lifting restriction of 20 pounds. Also submitted were reports from Dr. Edward A. Lee, a family practitioner, dated January 24 to May 8, 1995, which diagnosed a severe wrist sprain and advised that appellant could return to work eight hours per

¹ Appellant chose to forego the surgery.

day, limited duty with a lifting restriction of 10 pounds; no grasping; pushing and pulling; fine manipulation or driving. In an attending physician's report dated May 8, 1995, he diagnosed a severe wrist sprain and noted with a check mark yes that appellant's condition was caused or aggravated by an employment condition. Dr. Lee indicated that appellant was partially disabled and could return to light duty on January 24, 1995. Appellant also submitted a narrative statement dated June 19, 1995 which noted that the employing establishment had denied her request for leave for intermittent dates from April to June 21, 1995 and had to take leave without pay and as a result was in a precarious financial position.

Thereafter, appellant submitted various medical reports from Dr. Tom W. Ewing, an osteopath to whom she was referred by Dr. Lee, and who, in a report dated August 10, 1995, noted a history of appellant's work-related injury and diagnosed unstable distal radial ulnar joint; a tear of the fibrocartilage complex on the left; and trigger finger of the third and fourth digit. He advised that appellant could continue working with a 20-pound lifting restriction. Dr. Ewing's report of September 11, 1995 advised that appellant still had instability of her distal radial ulnar joint and could continue to work eight hours per day with no continuous holding or grasping with the left hand. In his work restriction evaluation form dated September 25, 1995, Dr. Ewing advised that appellant could work eight hours a day with a lifting restriction of 20 pounds and no simple grasping, pushing and pulling, and fine manipulation. He advised, in his report of October 30, 1995, that appellant had sustained a tear of the luno-triquetral ligament and had been off work for a period of time and had returned to work full time under the same restrictions as previously noted. In an attending physician's report dated November 21, 1995, Dr. Ewing diagnosed a tear of the luno-triquetral ligament by arthrogram and recommended surgery and advised that appellant could return to work full time with a 20-pound lifting restriction. A magnetic resonance imaging scan dated August 22, 1995 revealed no abnormalities.

Appellant also submitted reports from Dr. Ghazi M. Rayan, a Board-certified orthopedist, dated February 15 to April 11, 1996 and from Dr. Ewing dated February 22, 1996. Dr. Rayan's report of February 15, 1996 diagnosed a work-related ligament injury and recommended a long-arm splint for immobilization. In a work capacity evaluation dated February 15, 1996, he advised that appellant could work eight hours per day with no driving, grasping or rotation with the left hand. Dr. Rayan further noted in a report dated March 27, 1996 that appellant's complaints had subsided except for occasional symptoms while in the long-arm splint and advised that she could return to light-duty work on March 28, 1996 with the use of the splint. Dr. Rayan's April 11, 1996 report noted that appellant experienced severe pain in the left ulnar wrist and advised that appellant could continue on light duty. In his report of February 22, 1996, Dr. Ewing noted that appellant continued to experience discomfort over her radial ulnar ligament and recommended surgical intervention and advised that appellant could remain working with her present restrictions.

By decision dated May 9, 1996, the Office indicated that appellant had been employed as a full-time limited-duty letter carrier since June 1995, which was over 60 days, and that the pay in that position of \$622.98 per week was equivalent to the pay rate for the position appellant held at the time of her injury and no loss of wages occurred. The Office concluded that the position of full-time limited-duty letter carrier represented appellant's wage-earning capacity.

By letter dated June 7, 1996, appellant requested an oral hearing before an Office hearing representative. The hearing was held on June 18, 1998 and appellant's attorney contended that her limited-duty position was improper because it crossed crafts. He also generally contended that it was against her limitations.² Appellant submitted a brief which contained numerous medical records and copies of Equal Employment Opportunity complaints. Appellant also submitted a Form CA-8 dated April 12, 1996 noting that she worked light duty from February 15 to April 11, 1996 except for intermittent hours on February 15 and 22, March 12, 13 and 27, April 10 and 11, 1996 and noted that her pay rate as of February 15, 1996 was \$36,067.00 per year. Appellant submitted an attending physician's report from Dr. Rayan dated May 15, 1996 which indicated that appellant had a ligament injury of the left wrist and advised that she was able to perform light-duty work while wearing a splint beginning February 15, 1996.

In a decision dated September 18, 2001, the hearing representative affirmed the decision of the Office dated May 9, 1996.

The Board finds that the Office properly determined that the full-time limited-duty position which appellant performed fairly and accurately represented her wage-earning capacity.

Section 8115(a) of the Federal Employees' Compensation Act provides that, in determining compensation for partial disability, "the wage-earning capacity of an employee is determined by his actual earnings if his earnings fairly and reasonably represent his wage-earning capacity."³ Office procedures indicate that a determination regarding whether actual wages fairly and reasonably represent wage-earning capacity should be made after a claimant has been working in a given position for more than 60 days,⁴ and that the Office may determine wage-earning capacity retroactively after the claimant has stopped work,⁵ actual earnings will be presumed to fairly and reasonably represent wage-earning capacity only in the absence of contrary evidence.⁶

In the present case, appellant was a full-time letter carrier at the time of her injury on December 30, 1994. The record reveals that she had been working limited duty eight hours per day subject to restrictions set forth by her treating physician, Dr. Lee, since her injury of December 30, 1994 which was verified by appellant in her statement of June 19, 1995 and the

² The record reveals that on July 1, 1997 appellant underwent a functional capacity evaluation and thereafter was offered a full-time limited-duty position on August 18, 1997 which was amended on September 9, 1997 with a salary of \$37,832.00 per year. On November 5, 1998 appellant was removed from her position with the employment establishment on the grounds that she filled out the CA-1 form for an accident that did not occur. Thereafter, on March 22, 1999 appellant was offered a permanent carrier position with a salary of \$38,812.00 effective April 10, 1999 which she accepted.

³ 5 U.S.C. § 8115(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7a (April 1995); see *William D. Emory*, 47 ECAB 365 (1996).

⁵ *Id.* at Chapter 2.814.7e (April 1995).

⁶ See *Mary Jo Colvert*, 45 ECAB 575 (1994).

CA-8 form dated April 12, 1996, as well as documented by her rehabilitation nurse in reports dated February 2 to April 5, 1996.

As appellant was a full-time employee, the job itself was a full-time limited-duty position and, therefore, she need only to have worked limited duty for 60 days to make a formal finding of wage-earning capacity. In this case, appellant's actual earnings of \$36,067.00 per year as set forth in her CA-8 form dated April 16, 1996 exceeded her date-of-injury earnings of \$34,475.00 per year. As such, the Board finds that the Office properly determined that such employment fairly and reasonably represented her wage-earning capacity and, as she had no loss of wage-earning capacity she was thus not entitled to compensation for wage loss.

Although appellant later alleged that she was required to perform duties across crafts and against her medical restrictions, the record is void of any evidence to support this contention. Rather, Drs. Ewing and Rayan, in reports dated February 15 to May 15, 1996, advised that appellant could work eight hours per day limited duty while wearing a splint with restrictions on driving, grasping and left wrist rotation, but never mentioned that appellant was exceeding her medical restrictions or performing duties other than that of a full-time limited-duty letter carrier. The Board finds that the position on which his loss of wage-earning capacity was based was in compliance with the medical restrictions set forth by appellant's treating physicians and there is no evidence submitted by appellant which suggests that she was required to perform duties across crafts or against her medical restrictions. Inasmuch as appellant has not submitted any evidence to establish that her condition had worsened, there can be no finding that the limited duty appellant was previously performing was invalid.

The evidence does not establish that appellant's actual wages from the full-time limited-duty employment did not fairly and reasonably represent her loss of wage-earning capacity. Furthermore, appellant's work stoppage was not due to any change in her injury-related condition affecting her ability to work.

The decision of the Office of Workers' Compensation Programs dated September 18, 2001 is hereby affirmed.

Dated, Washington, DC
November 19, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member